IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: **HEALTH DIAGNOSTIC LABORATORY, INC., *et al.*,** **Debtors.**[1]	**Chapter 11** **Case No.: 15-32919-KRH** **Jointly Administered**

ORDER ESTABLISHING PROCEDURES
FOR AVOIDANCE ACTION ADVERSARY PROCEEDINGS

Upon the Motion (the "**Motion**")[2] filed by Health Diagnostic Laboratory, Inc., et al., the above-captioned debtors and debtors-in-possession (each a "**Debtor**" and collectively, the "**Debtors**") in these jointly administered bankruptcy cases (the "**Chapter 11 Cases**"), by their special conflicts counsel; for an Order Establishing Procedures for Avoidance Action Adversary Proceedings, and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728), and Integrated Health Leaders, LLC (2434). Pursuant to the Modified Second Amended Plan of Liquidation confirmed in this case by the Confirmation Order dated May 12, 2016 [Docket Item No. 1095] (the "Plan"), the Debtors and the Creditors' Committee were succeeded, for all purposes, by the Liquidating Trustee of the HDL Liquidating Trust, as those terms are defined in the Plan.

[2] Capitalized terms not otherwise defined herein shall have the meanings and definitions ascribed to such terms in the Motion.

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Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is **GRANTED**, and the procedures set forth in **Exhibit A** to this Order (the "**Avoidance Action Adversary Proceeding Procedures**") are hereby approved and shall govern the Avoidance Actions, effective as of the date of this Order.

2. The Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall apply to the Avoidance Actions, except to the extent that they conflicts with the Avoidance Action Adversary Proceeding Procedures.

3. The time periods set forth in this Order and the Avoidance Action Adversary Proceeding Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

4. The requirement under Local Bankruptcy Rule 9013-1 (G) to file a memorandum of law in connection with the Motion is hereby waived.

5. Adequate notice of the relief sought in the Motion has been given and no further notice is required.

6. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: May 25 2016
Richmond, Virginia

/s/ Kevin R Huennekens
United States Bankruptcy Judge

Entered on Docket: May 26 2016

We ask for this:

/s/ Cullen D. Speckhart, Esq.
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CERTIFICATE OF ENDORSEMENT

I hereby certify, under Local Bankruptcy Rule 9022-1, that the foregoing proposed Order has been endorsed by and/or served upon all necessary parties.

/s/ Cullen D. Speckhart
Counsel

EXHIBIT A

Avoidance Action Adversary Proceedings Procedures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: **HEALTH DIAGNOSTIC LABORATORY, INC.,** ***et al.,*** **Debtors.**[1]	**Chapter 11** **Case No.: 15-32919-KRH** **Jointly Administered**

AVOIDANCE ACTION ADVERSARY PROCEEDINGS PROCEDURES

These Avoidance Action Adversary Proceedings Procedures have been approved by the United States Bankruptcy Court for the Eastern District of Virginia (the "**Court**") in the above-captioned jointly administered Chapter 11 bankruptcy cases (the "**Chapter 11 Cases**"). Capitalized terms used but not defined herein shall have the meanings ascribed to the terms in the Motion to Establish Procedures Governing Avoidance Action Adversary Proceedings for an Order establishing procedures for avoidance action adversary proceedings (the "**Motion**") [Docket No. 1076]. The Court approved these Procedures by its Order entitled Order Establishing Procedures for Avoidance Action Adversary Proceedings (the "**Order**").

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Counsel to Richard Arrowsmith, Liquidating Trustee, and the Liquidating Trust Oversight Committee.

These Procedures apply to all of the Avoidance Actions that the Debtors and/or the Liquidating Trustee anticipates filing.[2]

A. **Case-Specific Summons.** The summons issued for each Avoidance Action will vary from the Court's standard form and will be an "Answer Only" summons. The summons will inform the defendant that it has thirty (30) days from the date of service of the summons to respond to the complaint. The summons will not set a pretrial conference date; any pretrial or other scheduling conference will be set only after the completion of the mediation procedures described below unless otherwise ordered by the Court.

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[2] Notwithstanding anything to the contrary herein, the Procedures will not apply to the following:

- The Causes of Action identified in the Motion of Creditors Committee for an Order Authorizing It to Conduct Bankruptcy Rule 2004 Examinations of the Debtors and Certain Third Parties [Docket No. 541, the Order Authorizing the Creditors Committee to Conduct Bankruptcy Rule 2004 Examinations of the Debtors and Certain Third Parties, and the Committee's demand letter to D&Os, dated October 26, 2015, (annexed as Exhibit A to the Motion of the Creditors Committee for an Order Establishing Protocol for Payment of Proceeds under Director and Officer Liability Insurance Policies [Docket No. 661]), whether such Cause of Action is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity.
- The Causes of Action identified in the demand letter to LeClairRyan, dated on or about October 26, 2015.
- Causes of Action similar to those identified in the demand letter to LeClairRyan, dated on or about October 26, 2015, against Dennis Ryan, Michael Ruggio, and Patrick Hurd.
- The Causes of Action identified in the demand letter from the Committee to certain Persons, including D&Os, whether such Causes of Action are against such D&Os in their capacity as such or are against such D&Os in their individual capacity, dated on or about October 26, 2015.
- Causes of Action arising out of or related to the Debtors or their business practices against the D&Os, whether such Cause of Action is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity, the Debtors' current and former shareholders, the Debtors' current and former employees, the BlueWave Parties, Helena Laboratories, and LeClairRyan arising out of or related to, inter alia: (i) intentional or constructive fraudulent conveyance under section 548 of the Bankruptcy Code and sections 55-80 and 55-81 of the Virginia Code; (ii) preference payments under section 547 of the Bankruptcy Code; (iii) unlawful distributions to shareholders in violation of section 13.1-653 of the Virginia Code; (iv) breach of fiduciary duty under section 13.1-690 of the Virginia Code; (v) Virginia common law conspiracy and statutory conspiracy under section 18.2-499 of the Virginia Code; (vi) claims for civil remedies against racketeer influenced and corrupt organizations under Chapter 96 of Title 18 of the United States Code; (vii) claims for claims for overpayments, unjust enrichment, fraud, negligent misrepresentation, tortious interference with contract and unfair and deceptive, and civil conspiracy, whether under federal law or the laws of any state; (viii) the Claims and Causes of Action asserted in the actions captioned Connecticut General Life Insurance Company et al v. Health Diagnostic Laboratory, Inc., (Case No. 3:14-cv-01519-VAB), pending before the United States District Court for the District of Connecticut, and Aetna Inc. v. Health Diagnostic Laboratory, Inc. et al., (Case No. 2:15-cv-01868-RK) United States District Court for the Eastern District of Pennsylvania, and any other Causes of Action arising from the occurrences, transactions, and/or practices that are the subject of such proceedings; and/or (ix) aiding and abetting any act or omission of any Entity.
- Causes of Action against LeClairRyan for professional malpractice.
- Causes of Action against Dennis Ryan, Michael Ruggio, and Patrick Hurd for professional malpractice.
- Causes of Action against True Health Diagnostics, LLC.
- Causes of Action against the United States.

All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Second Amended Plan of Liquidation Proposed by the Debtors [Docket No. 852] (the "**Plan**"), or any amendments or modifications to the Plan.

B. **Extension of Time by Which Plaintiff Must Serve the Summons.** The time period under Federal Rule of Civil Procedure 4(m), made applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7004, by which the plaintiff must serve the summonses and complaints in the Avoidance Actions on defendants in the United States shall be extended by thirty (30) days, without prejudice to the plaintiff to seek further extensions of time for cause shown. The Debtors and/or the Liquidating Trustee should, however, endeavor to serve the summons and complaints as promptly as practicable after issuance of the summons.

C. **Stipulation to Extend Time for Defendants to Respond to the Complaint.** Without further order of the Court, the parties may stipulate to no more than three (3) extensions of the time within which a defendant must respond to a complaint. No single extension may extend such time by more than thirty (30) days. Each stipulation must be in writing to be binding on the plaintiff.

D. **Stay of Requirement to Conduct Scheduling Conference.** Federal Rule of Civil Procedure 26(f), applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7026 (mandatory meeting before scheduling conference/discovery plan) shall be stayed with respect to the Avoidance Actions. Upon the filing of the Mediator's Report (as described below) with respect to each Avoidance Action that is not resolved through the Mediation Process (as described below) or otherwise, the parties shall conduct a Rule 26(f) conference and submit a discovery scheduling order (the "Avoidance Action") to the Court prior to the date set for the Pretrial Scheduling Conference (as described below).

E. **Stay of Discovery.** The parties' obligations to conduct formal discovery in each Avoidance Action shall be stayed until the Scheduling Order is entered provided that the stay of discovery shall in no way preclude the parties from informally exchanging documents and information in an attempt to resolve an Avoidance Action in advance of, or during, the Mediation Process.

F. **Mandatory Mediation Process.** Mediation will be required in all Avoidance Actions in accordance with the following procedures and timetable:

1. Within sixty (60) days after the defendant has filed its response to the complaint, the parties must have commenced the mediation process by having (a) selected a mutually agreeable mediator from the list of mediators attached hereto as **Exhibit 1**, (b) agreed in writing to the terms of the mediator, including as to compensation, and (c) scheduled a date for the mediation. If any defendant does not timely select a mediator, then the plaintiff shall promptly (i) assign a mediator to the case and (ii) so notify the defendant. Each mediator selected by this process shall hereafter be referred to as the "**Mediator**."

2. At least ten (10) days prior to the scheduled mediation, the parties shall exchange position statements and submit the statements to the Mediator. Unless agreed in writing by both parties and the Mediator, the position statements shall not exceed seven (7) pages double-spaced (exclusive of exhibits and schedules). The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits, and a settlement proposal.

3. The Mediator's fees shall be split equally by the parties, and payment arrangements satisfactory to the Mediator must be completed prior to the commencement of the mediation. If a defendant fails to timely pay any bill for a Mediator's fees, the Liquidating Trustee may take action to collect such fees, including but not limited to withholding distribution on account of any allowed claim filed by the defendant and proceeding to obtain judgment against the defendant for all overdue Mediator's fees, as well as fees and costs associated with such a proceeding.

4. The Mediator will preside over the mediation with full authority to determine the nature and order of the parties' presentations. The Mediator may implement additional procedures which are reasonable and practical under the circumstances.

5. The parties will participate in the mediation, as scheduled and presided over by the Mediator, in good faith and with a view toward reaching a consensual resolution. At least one counsel for each party shall attend the mediation in

person, and a representative of the defendant with full settlement authority shall additionally attend the mediation in person; provided, however, that a Mediator, in his or her discretion, may allow such representative to appear telephonically.

6. The length of time necessary to effectively complete the mediation will be within the Mediator's discretion. The Mediator may also adjourn a mediation that has been commenced if the Mediator determines that an adjournment is in the best interests of the parties.

7. All proceedings and writings incident to the mediation will be considered privileged and confidential, and shall not be reported or admitted in evidence for any reason whatsoever. Nothing stated or exchanged during a mediation shall operate as an admission of liability, wrongdoing or responsibility.

8. The mediation must be concluded no later than one hundred twenty (120) days after the date on which the defendant has filed its response to the complaint.

9. If a party (a) fails to submit the required submissions as provided in these Mediation Procedures or as may be agreed to by the Mediator or ordered by the Court, or (b) fails to attend the mediation as required, then the non-defaulting party may file a motion for default judgment or a motion to dismiss the Avoidance Action.

10. Within ten (10) days after the conclusion of the mediation, the Mediator will file a report, drafted with the caption of the Avoidance Action, which need only state (a) the date that the mediation took place, (b) the names of the parties and counsel that appeared at the mediation, and (c) whether or not the applicable Avoidance Action settled (the "**Mediator's Report**").

11. The Debtors and/or Liquidating Trustee are authorized to enter into compromises of Avoidance Actions individually, or in conjunction with the resolution of filed claims or alleged causes of action against the Debtors in accordance with the following:

    a. For compromises of claims that would result in an allowed claim of less than One Million and 00/100 Dollars ($1,000,000.00), the Debtors and/or the Liquidating Trustee shall be authorized to enter into such proposed settlement without further Court approval.

    b. For compromises of claims that would result in an allowed claim of One Million and 00/100 Dollars ($1,000,000.00) or greater, the Debtors and/or the Liquidating Trustee shall seek Court approval of such proposed compromise pursuant to Bankruptcy Rule 9019.

    c. With respect to any filed claims that are settled pursuant to these procedures, the Objecting Party will provide notice of the applicable settlement(s) to the Debtors' authorized claims, noticing, and balloting agent, American Legal Claim Services ("**ALCS**"). If applicable, ALCS shall be authorized and directed to amend the claims register to reflect the terms of the relevant settlement(s) without further order of the Court.

d. In resolving the Avoidance Actions pursuant to the foregoing procedure, the Debtors and/or the Liquidating Trustee are further authorized to offer and give to a settling party a limited release pursuant to which the Debtors and/or the Liquidating Trustee acknowledge that it is prohibited from pursuing any further action or claim related to the alleged Avoidance Action. Such a release may, but need not, include the following specific language: "The Liquidating Trustee, on behalf of itself, the Debtors, and the Debtors' bankruptcy estates, hereby release [settling party] from any and all claims relating to payments made by the Debtors in the ninety (90) days prior to the Petition Date."

e. To minimize expenses and maximize value for creditors, pursuant to the terms of the Motion, the Debtors and/or the Liquidating Trustee are authorized to resolve any filed claims or alleged causes of action against the Debtors and/or the Debtors' bankruptcy estates in conjunction with the settlement of Avoidance Actions.

f. To further minimize expenses and maximize value for creditors, in the event an Avoidance Action is the subject of a settlement agreement or settlement stipulation, any adversary proceeding filed so as to prosecute that Avoidance Action may be dismissed pursuant to a notice of dismissal pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure as opposed to a stipulation for dismissal pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

12. If an Avoidance Action has not settled, then the plaintiff must file with the Court, and serve on the defendant, a notice of Pretrial Scheduling Conference to take place in the Avoidance Action at the next scheduled Omnibus Hearing, provided however, that a minimum of fourteen (14) days' notice of the Pre-Trial Scheduling Conference is required.

G. **Pretrial Scheduling Conferences/Motion Hearing Dates.** The Court will schedule regular Omnibus Hearing dates in the bankruptcy case, on which dates any post-mediation Pretrial scheduling conferences in the Avoidance Actions will take place. Any pretrial motions filed by the parties in the Avoidance Actions must be set for hearing on one of the Omnibus hearing dates or unless otherwise ordered by the Court.

H. **Motions Affecting All Avoidance Actions.** Any motions filed by the Debtors and/or the Liquidating Trustee that affect all of the Avoidance Actions may and should be filed in the above-captioned bankruptcy case, and not in each separately docketed Avoidance Action provided, however, that each defendant shall receive notice of the filing of the same.

I. **Application of Existing Case Management Order.** The Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket No. 40] shall remain in full force and effect, subject to modification by further order of this Court.

J. **Notice of these Special Procedures.** A copy of these Procedures will be served on each defendant with the summons and complaint in each Avoidance Action.

EXHIBIT 1 TO AVOIDANCE ACTION ADVERSARY PROCEEDINGS PROCEDURES

(Approved List of Mediators)

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